IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.969 OF 1989

Municipal Corporation of Greater Bombay ...Appellant

Vs.

Rahmat Banu M.Merchant ...Respondent

Mr.R.T.Walawalkar with Mr.J.J.Xavier i/b Mr.M.V.Shetty and Mr.S.J.Billimoria for the Appellant
None for the Respondent.

CORAM: A.S.OKA, J.
DATED: MARCH 21 and 22, 2006.

ORAL JUDGMENT:

1. Heard Shri Walawalkar, the learned Counsel for the Appellant. When this Appeal was called out yesterday, I heard the submissions of the learned Counsel for the Appellant. As none appeared for the Respondent, the Judgment was not delivered yesterday with a view to give one more opportunity to the Respondent. Today when the Appeal is called out, none appears for the Respondent. Hence, I proceeded to deliver the Judgment.

2. By this First Appeal, the Appellant has taken exception to the Judgment and Order dated 31st August 1987 passed by the Additional Chief Judge of the Small Causes Court, Mumbai. By the impugned Judgment and Order, the learned Judge allowed the Appeal preferred by the Respondent under section 217 of the Mumbai Municipal Corporation Act,1888 (hereinafter

referred to as the said Act of 1888).

3. With a view to appreciate the submissions made by the learned Counsel for the Appellant, it will be necessary to refer to the facts of the case in brief. The property subject matter of this Appeal is an open plot of land admeasuring 5150 sq.yards in village Chincholi, Bunder Road, Malad, Mumbai. The said plot of land is bearing survey No.429 Hissa No.1, Part 3 and sub plot No.2. The said land was proposed to be assessed at Rs.46,500/- with effect from 1st April 1983. The Respondent lodged a complaint in respect of the proposed fixation of the rateable value. The Investigating Officer investigated into the complaint and the rateable value came to be fixed at Rs.33,250/- N.P.A. An Appeal was preferred under Section 217 of the said Act of 1888 in the Small Causes Court. By the impugned Judgment and Order, the learned Judge held that the order dated 16th March 1984 passed by the Investigating Officer fixing the rateable value at Rs.33,250/- is not legal and proper. The learned Judge held that the property was required to be assessed at the rate of Rs.10/- per sq.meter as provided under section 11(b) (i) of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the said Act of 1976). The learned Judge directed the Appellant to make assessment of the property in Appeal on the said basis and directed the Appellant to refund the excess amount deposited by the

Respondent. The learned Judge held that the assessment of rateable value made by the Investigating Office at the rate of Rs.75/- per sq.meter was contrary to the provisions of Section 11(b) (i) of the said Act of 1976.

4. Shri Walawalkar appearing for the Appellant submitted that merely because the provisions of the said Act of 1976 were applicable to the land in question and merely because holding of the Respondent on the relevant date was more than maximum holding contemplated under the said Act of 1976, the provisions of Section 11 of the said Act of 1976 will have no application at all. He submitted that the provision of section 11 of the said Act of 1976 shows the manner in which the compensation is payable to the owner of the land whose property is deemed to have been acquired under the said Act of 1976. He submitted that the formula adopted by the said Act of 1976 for fixation of the market value of the vacant land cannot be applied in the matter of fixation of the rateable value, when the statute lays down that the rateable value shall be determined on the basis of hypothetical rent which the property is likely to be fetch. He submitted that the entire approach of the learned Judge was erroneous and therefore, he could not have directed the reassessment of the property at the rate of Rs.10/- per sq.meter.

5. I have considered the submissions. Section 154 of the

said Act of 1888 lays down the manner in which the rateable value is to be determined. Sub Section 1 of Section 154 of the said Act of 1888 reads thus :

. **154.Rateable value how to be dertermined -**

(1) In order to fix the rateable value of any building or land assessable to a property-tax, there shall be deduction from the amount of the annual rent for which such land or building might reasonably be expected to let from year to year a sum equal to ten per centum of the said annual rent and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever.

Thus, the said Act of 1888 itself provides for the method by which the rateable value of the building/land assessable to the property tax is to be determined. The test laid down by the statute is on the basis of the hypothetical rent which the land or the building might reasonably be expected to fetch from year to year. The rateable value is calculated by deducting 10% from the annual rent for expenditure for repairs or on any other account whatsoever.

6. The learned Judge of the Small Causes Court has relied upon Section 11 (b) (i) of the said Act of 1976 which read

thus :

. "**Payment of amount for vacant land acquired .-** (1) Where any vacant land is deemed to have been acquired by any State Government under sub section (3) of Section 10, such State Government shall pay to the person or persons having any interests therein, - (a) in a case where there is any income from such vacant land, an amount equal to eight and one-third times the net average annual income actually derived from such land during the period of five consecutive years immediately preceding the date of publication of the notification issued under sub-section (1) of Section 10; or

(b) in a case where no income is derived from such vacant land, an amount calculated at a rate not exceeding -

. (i) ten rupees per square metre in the case of vacant land situated in an urban agglomeration falling within category A or category B specified in Sch.1; and....."

Section 10 of the said Act of 1976 deals with the acquisition of vacant land held in excess of ceiling limits. Under sub

section 3 of Section 10, a power is conferred on the Competent Authority under the Act of 1976 to declare that the excess vacant land referred to in sub section 1 of Section 10 shall be deemed to have been acquired by the State Government.

The said Act of 1976 was brought on the statute book with the main object of preventing concentration of urban property in the hands of the few persons. The object was to bring about utilisation of the urban lands in urban agglomerations to subserve the common good by ensuring its equitable distribution. In consonance with the these objects of the said Act of 1976, section 11 makes provision for payment of compensation to the person having interest in the vacant land which is deemed to have been acquired under sub section 3 of Section 10 of the said Act of 1976. Thus, what is provided in Section 11 and in particular in clause (b) of sub section 1 thereof is a formula for computing the compensation payable to the person having interest in the land which is deemed to have been acquired by the State Government. Section 11 of the said Act of 1976 operates in a totally different field. Thus, it is obvious that the formula adopted by sub section 1 of section 11 of the said Act 1976 could not have been adopted for the purpose of computing the rateable value especially when Section 154 lays down the manner in which the rateable value is to be determined. In my view, the learned

Judge has committed a gross error by relying upon clause (b) of sub section 1 of the Section 11 of the said Act of 1976.

7. As noted earlier, Investigating Officer proceeded by taking the market value of the land at Rs.75/- per sq.meter. The learned Judge referred to the provisions of the said Act of 1976 and in particular the provision which lays down that no person is entitled to hold any vacant land in excess of ceiling limit. He came to the conclusion that the excess land subject matter of the Appeal was not useful for having a beneficial use and was practically of no benefit to the Respondent.

8. At this stage, going back to the provisions of the said Act of 1976, it must be noted that the vacant land in excess of ceiling limits can be acquired only after following the procedure laid down by the Act and in particular by Section 8 to 10 thereof. There is no automatic vesting of the land held in excess of ceiling limit under the provisions of the said Act of 1976 without following the procedure. Section 20 of the said Act of 1976 confers power on the Government to grant exemption from applicability of the Act. Section 21 provides that an excess vacant land shall not be treated as excess in certain cases where a scheme contemplated by the said section is approved by the authority under the said Act of 1976.

9. The Respondent stepped into witness box. He admitted that the property is not yet acquired by the Competent authority and the application made by the Respondent for release of the land is still pending. Therefore, the approach of the learned Judge was obviously erroneous when he applied rate of Rs.10/- for per sq.meter by invoking section 11(b) (i) of the said Act of 1976.

10. If the test laid down under the said Act of 1976 is not to be applied, the question arises as to what should be the rateable value. One Gajanan Joshi was examined on behalf of the Appellant-Corporation who at the relevant time was attached to Assessment Department. He stated that the assessment of the land in question was proposed at the market rate of Rs.150/- per sq.meter for calculating the hypothetical rent. He stated that considering the fact that the land was acquired by the said Act of 1976, the Investigating Officer adopted the market rate at Rs.75/- per sq.meter for calculating the rateable value. It is pertinent to note that in the cross examination, the said witness has stated as under :

"....To the east of the plot in appeal there was a road. It was a Katchha road. It was a cross road to Chincholi Bunder Road. That road was 10 to 12

ft. in width. The plot in appeal was at a distance of 150 ft. from Chincholi Bunder Road. **To the west of property in appeal there was open land. It was also assessed at the rate of Rs.40/- per sq.meters. That property was being property No.2934, I cannot say what was the sub number. I do not know if any other plot was under Urban Land Ceiling Act. I do not know whether plot bearing No.2934 (2A) was considered as land under Urban Land Ceiling Act."** (emphasis supplied)

This witness admitted that to the West side of the property in appeal, there was an open land which was assessed at the rate of Rs.40/- per sq.meter. He has stated that number of that property is 2934. Thus, he has admitted that an open plot of land which is adjacent to the plot involved in the Appeal, the assessment was made on the basis of the rate of Rs.40/- per sq.meter. In view of this admission there is no reason why the plot in Appeal should not be assessed at the rate of Rs.40/- per sq.meter.

11. In view of this position, Appeal must partly succeed. Hence, I pass the following order :

i) Impugned Judgment and Order dated 31st August 1987 is

set aside.

ii) The operative part of the impugned Judgment will now read as under :

"a) Appeal is partly allowed. The order dated 16th March 1984 passed by the Investigating Officer fixing the rateable value of the property in Appeal at Rs.23,250/- with effect from 1st April 1982 is hereby set aside.

b) The Respondents are directed to assess the property in the Appeal at the rate of Rs.40/- per sq.meter.

c) After the assessment is made as aforesaid, excess amount deposited by the Appellants shall be adjusted in accordance with the provisions of section 217 of the said Act of 1888.

iii) First Appeal is partly allowed in above terms. No order as to costs.

Judge.